

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-1875

To Be Argued By
SELIG LENEFSKY

UNITED STATES COURT OF APPEALS

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-v-

74 Cr. 103

AARON KEREKES,

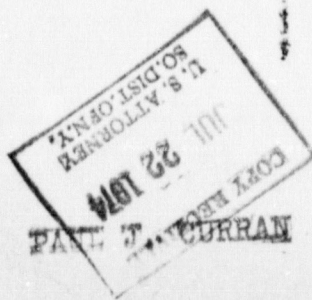
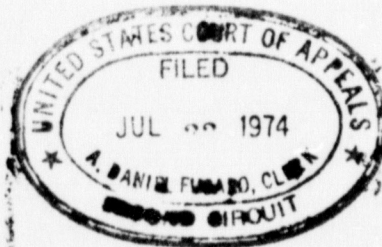
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT
AARON KEREKES

SELIG LENEFSKY
Attorney for DEFENDANT-
APPELLANT
Office & P. O. Address
277 Broadway
New York, New York



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UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-v-

AARON KEREKES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT

AARON KEREKES

PRELIMINARY STATEMENT

The defendant, AARON KEREKES, appeals from the judgment of the United States District Court of the Southern District of New York convicting him after trial before Honorable Robert J. Ward, United States District Judge, and a jury, of conspiring to possess with the intent to distribute a controlled substance (marijuana (hashish)) in violation of Title 18 U.S.C. Sections 812 et seq., and one substantive count of possessing with intent to distribute and knowingly distributing a Schedule I controlled substance (marijuana (hashish)) in violation of Title 21 U.S.C. Sections 812, 841 (a)(1) and 841(b)(1)(A) and Title 18 U.S.C.

Section 2.

The Defendant-Appellant was sentenced to 15 years on each count to run concurrently on May 22, 1974. The defendant is presently confined at Federal Detention Headquarters at 427 West Street, New York, New York.

THE FACTS

The Government Case:

The chief government witness was an informant for pay, named Srubavel Tavlin. Tavlin testified that he visited an acquaintance, David Friedman, on August 28, 1973. Friedman offered Tavlin a deal in hashish. Tavlin claims that there had been no prior drug deals with Friedman (R p. 25). Friedman called the defendant, Aaron Kerekes, to his apartment and introduced Tavlin and Kerekes. Kerekes gave Tavlin a sample of the hashish. Tavlin brought the sample to his contact agent and was instructed to make a deal for 20 pounds at \$1,000.00 per pound.

Tavlin, Kerekes and Friedman met again on August 29, 1973 and discussed the deal in a local cafe. Tavlin was to buy 20 pounds of hashish at the stated price. Federal agents surveilled the meeting. Kerekes made a phone call. Agent Yarborough testified that he was able to make out six of the numbers called (R p. 172, 173). These numbers were the same as those in the phone number of the apartment of the defendant Nathan Joseph which was raided later that evening. Tavlin then left to pick

up marked funds.

Tavlin and Kerekes met again that evening. After being shown the money in the trunk of Tavlin's car, Kerekes directed Tavlin to drive to 139 Spring Street where some artist had a studio. He was to pick up the hashish there. Since neither party wanted to disclose his principal and since the building was kept locked and protected by a television monitor only Kerekes could go in to get the hashish.

Tavlin parked across the street from 139 Spring Street. After rechecking the money, Kerekes went to the building and rang a bell. A man leaned out of a fourth floor window and shouted in Hebrew, "Aaron, is that you?". Tavlin understood Hebrew. It was too dark to identify the man at the window (R p. 47). Kerekes then entered the building. He came out in a few minutes and rechecked the money, returned to the building vestibule and came out again carrying a box. Tavlin motioned for Kerekes to come to the car with the box. When Kerekes did so, the surveilling agents arrested him.

Tavlin also testified that he saw an unidentified man accompanying Kerekes out of the building, but who ran back into the building elevator as Kerekes approached the car. This was prior to the arrest (R p. 50,51). Tavlin specifically testified that all six agents were out of sight around the corner (R p. 48, 49). No agent testified to seeing the unknown man who came out with Kerekes and ran back to the building. Yet, Agent Allen said

that he was surveilling the building entrance from directly across the street and saw a man's arms, legs and clothing and then had a clear view of the same man on the staircase inside the building hallway (R. p. 158). He later identified this man as the co-defendant, Nathan Joseph.

While several agents arrested Kerekes, the others tried to enter the building. Kerekes was hustled across the street to the building while he was being asked where in the building he got the hashish. A matchbook cover with the name "Nathan" and the phone number of the apartment of which Nathan Joseph was co-lessee was taken from Kerekes. Kerekes was not given any Miranda warnings (R p. 260).

Two men, Michael Rubinstein and Samuel Capsuto, were arrested in the building, the former on the roof and the latter in the apartment. Samuel Capsuto apparently told the agents that his brother, Jack Capsuto and the co-defendant, Nathan Joseph, were co-lessees of the raided apartment. There was no testimony at all as to an arrest at that time of Joseph. There were six agents. There was no testimony that Joseph fled or escaped. There was no explanation at all for his not being arrested at that time.

The surveilling agents confirmed Tavlin's account of his and Kerekes' meetings and movements, although no conversations were overheard. One agent heard the shouting from the window, but could not understand the language. No agent testified to

seeing the man who accompanied Kerekes when he left the building with the box of hashish.

At a formal interview with an assistant federal attorney, where his rights were given to him, Kerekes is alleged to have admitted that he feared to name his source of hashish and become an informant because he was not certain that the government would really try to intercede with the Court in his behalf.

The Defendant Kerekes' Case:

Kerekes admits meeting Tavlin at Friedman's home and then going to the cafe. He admits placing a call, but testified that it was to his mother in Queens. Tavlin was to give Kerekes a lift to Queens since Tavlin would pass there on his way to do some heavy gambling on Long Island. Boastfully, Tavlin showed Kerekes a suitcase full of money. Tavlin detoured to Spring Street and, as a favor, asked Kerekes to pick up a package for him (Tavlin) since he did not want to leave the car with all that money in it (R p. 217). Kerekes testified that Tavlin told him the package contained ovenware. The name and phone number on the matchbook cover were written by Kerekes at the behest of Tavlin (R p. 219).

POINT ONE

ALL IMMEDIATE POST-ARREST STATEMENTS TO THE AGENTS AND THE SEIZED MATCHCOVER WITH THE NAME AND PHONE NUMBER SHOULD BE SUPPRESSED.

No Miranda warnings were given to Kerekes by the agents.

Yet, he was questioned and searched. The very recent decision in Michigan v Tucker (94 S.C. 2357, 2363) very strongly reaffirms the necessity for the Miranda v Arizona (384 U.S. 436) safeguard warnings in police custodial interrogations. The agents admit grabbing Kerekes, hustling him across the street, while shouting questions as to the source of the hashish. Parenthetically, the contents of the seized box were actually unknown at that time.

It cannot be maintained that, under these arrest circumstances, any statements or incriminating actions by the defendant were a result of full and free choice and an understanding of consequences. It is most respectfully submitted that such questioning and seizure are a violation within the teaching of Wong Sun v U. S. (371 U.S. 471); Harless v Turner (456 F. 2d 1337, 1338).

The details and facts may vary, but the involuntariness herein is as real as in Watts v Indiana (338 U.S. 49), Gallegos v Colorado (370 U.S. 49) or Brown v Mississippi (297 U.S. 278). The degree of possible truth of improperly obtained evidence is not relevant to the necessity for its exclusion, Jackson v Denno (378 U.S. 368).

If the defendant is correct in his understanding of the foregoing citations and of the host of trial and appellate decisions which have fleshed out these principles in so many varying situations, then the matchbook cover and any immediate post-arrest statements of Kerekes should be suppressed. Since this evidence

cannot be erased from the minds of the jurors, the substantive Count II must fall.

POINT TWO

NO CONSPIRACY WAS PROVEN AS A MATTER OF LAW.

The indictment charges the defendants, Aaron Kerekes and Nathan Joseph, with conspiracy to possess and to sell or distribute a controlled substance, hashish.

The words "persons unknown" are pro forma words printed on the indictment form. It is submitted that these printed words have no meaning, no substance, no independent life, but must be based on some shred of evidence or permissible inference from evidence to make them applicable to particular defendants.

The two individuals arrested in the Spring Street building, Michael Rubinstein and Samuel Capsuto, and David Friedman are not charged as co-conspirators, nor, very obviously, are they persons unknown. That leaves only Kerekes and Joseph.

Neither the informant, Tavlin, nor any of the agents knew or had heard of Joseph prior to the August 29th arrests. The only testimony relative to Joseph alleged that Joseph was a co-lessee of the raided apartment, that his name and apartment phone number were on the seized matchbook cover, the very doubtful identification of Agent Allen of someone in the vestibule and an alleged call by Kerekes to a number very similar to that of Joseph's apartment. There was testimony that Joseph's co-lessee was a Jack

Capsuto, brother of the arrested Samuel Capsuto. It is a fair inference that the phone was Jack Capsuto's, also. Since no agent overheard Kereke's alleged call, there is at least an equal probability that it was to Jack Capsuto as to Nathan Joseph. A reasonable doubt!

Appellant has just characterized the identification of Joseph as very weak. Appellant respectfully amends that statement to wholly unbelievable. The jury found Tavlin's evidence wholly convincing. Why should Tavlin be mistaken when he said that all of the agents were out of sight? Tavlin's testimony is bolstered objectively by his description of an unknown man accompanying Kerekes from the building and then running back. No agent saw this. They claimed to be watching the building. Agent Allen claims an identification of Joseph inside the hallway as the same man he observed in the vestibule. In the dark, Agent Allen recognized arms, legs and clothing. Yet, most strangely, no Joseph is found in the building. No Joseph is arrested in the building. No explanation is offered for such failure. From non-evidentiary colloquy it appears that there was more to the whole story than was brought out on the witness stand. May a defendant be convicted on evidence that might exist but is never brought into the case? No citation is required to refute such possibility.

It is respectfully suggested that there was not sufficient evidence to connect Joseph with the hashish or to link Joseph and Kerekes in the charged conspiracy. The suppression

of the matchbook cover, the unbelievable identification of Joseph, the lack of evidence of participation of Joseph, the very real reasonable doubt as to the recipient of the alleged phone call and the failure of the government to even hint at some other "person unknown" as a co-conspirator, all leave only the defendant, Kerekes, as the sole convicted conspirator. This is contrary to law, U. S. v Suba (227 F. Supp 445); U. S. v Hysohian (448 F. 2d 343). While the words are in the indictment, actually, "persons unknown" were not submitted to the jury, Grover v U.S. (3 F. 2d 965); Didenti v U. S. (8 F. 2d 318). Again, only Kerekes is left. By statute (Title 18, U.S.C. 371) and by case law (Krulewitch v U. S. (336 U.S. 440, 445-448) not less than two persons may form a conspiracy.

The defendant, Kereke's, conviction for conspiracy should be reversed as a matter of law.

CONCLUSION

THE GOVERNMENT HAVING FAILED TO PROVE THE CHARGED CONSPIRACY AND THE ILLEGALLY SEIZED EVIDENCE NOT SUPPRESSED, BUT PRESENTED TO THE JURY, THIS COURT IN THE INTEREST OF JUSTICE SHOULD REVERSE THE JUDGMENT OF CONVICTION, DISMISS THE INDICTMENT, OR, IN THE ALTERNATIVE, ORDER A NEW TRIAL.

Respectfully submitted,

SELIG LENEFSKY
Attorney for the Defendant
P. O. Office Address
277 Broadway
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA

: NOTICE OF APPEAL

: Indictment No. 74 Cr. 103

NATHAN JOSEPH and
AARON KEREKES,

Defendants.

-----X
Name and address of Appellant: Aaron Kerekas, 48 West 69th
Street, New York, New York.

Name and address of Appellant's Attorney: Selig Lenefsky,
277 Broadway, New York, New York 10007.

Offense: Conspiracy to violate Sections 812, 841(a)(1) and
841 (b)(1)(A) of Title 21, U.S.C. (conspiracy to distribute and
possess with intent to distribute a narcotic drug) and a viola-
tion of Title 21 U.S. Code, Sec. 812, 841(a)(1) and 841 (b)(1)(A)
and Title 18 U.S. Code, Sec. 2 (distributing and possessing with
intent to distribute a Schedule I narcotic drug controlled
substance, to wit, approximately 19.8 pounds of a hashish-like
substance containing marijuana).

Appellant appeals from the judgment of conviction
rendered against him on or about August, 1974, upon which he
was sentenced on May 22, 1974, to imprisonment for a period of
15 years on each count to run concurrently.

Appellant is presently confined at Federal Detention
Headquarters at 427 West Street, New York, New York.

The above-named appellant, AARON KEREKES, hereby appeals
to the United States Court of Appeals for the Second Circuit from
the above-stated judgment and from each and every part and the
whole thereof.

Dated: New York, New York
May 18, 1974

Yours, etc.,

SELIG LENEFSKY
Attorney for Appellant
Office & P.O. Address

TO: HON. PAUL J. CURRAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

NATHAN JOSEPH and
ARON KIRKES,

INDICTMENT

74 Cr.

:
:
Defendants . :
-----X

The Grand Jury charges:

1. From on or about the 1st day of July, 1973
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York, **NATHAN JOSEPH and**
ARON KIRKES

the defendant^s and others to the Grand Jury unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederated
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendant^s unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule I and II
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 29, 1973, the defendant AARON KERKES drove in a car to the vicinity of 139 Spring Street, New York, New York.
2. On or about August 29, 1973 the defendant AARON KERKES exited the doorway of 139 Spring Street carrying a box containing approximately 19.8 pounds of hashish-like substance containing marijuana.
3. On or about August 29, 1973, the defendant NATHAN JOSEPH was on the ground floor of 139 Spring Street, New York, New York.

(Title 21, United States Code, Section 846)

SECOND COUNT

The Grand Jury further charges:

On or about the 29th day of August 1973
in the Southern District of New York,

**NATHAN JOSEPH and
AARON KEREKES**

the defendant, , unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately 19.8 pounds of a hashish-like substance
containing marijuana.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).) and Title 18,
United States Code, Section 2.

THIRD COUNT

The Grand Jury further charges:

On or about the **29th** day of **August, 1973**
in the Southern District of New York,

NATHAN JOSEPH

the defendant , unlawfully, intentionally and knowingly
did possess with intent to distribute, a Schedule **I**
narcotic drug controlled substance, to wit, **approximately**
25 pounds of hashish-like substance containing marijuana.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CORMAN
United States Attorney

THIRD COUNT

The Grand Jury further charges:

On or about the **29th** day of **August, 1973**
in the Southern District of New York,

NATHAN JOSEPH

the defendant , unlawfully, intentionally and knowingly
did possess with intent to distribute, a Schedule I
narcotic drug controlled substance, to wit, **approximately**
25 pounds of hashish-like substance containing marijuana.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

VS.

**NATHAN SCHAPIRO and
ABRAHAM SCHAPIRO,**

Defendants.

INDICTMENT

**Title 18, U.S.C., §§ 846, 847, 848
(a)(1) & 848(b)(1)(A)**

United States Attorney.

A TRUE BILL

Foreman.

1 5 GR

Tavlin - direct

2 innocence. It is the burden of the Government who levels
3 these charges to prove the guilt of Aaron Kerekes, to prove
4 these charges by evidence in quality, believable, and in
5 quantity beyond a single reasonable doubt. We are here
6 to see exactly what evidence there is, how it can show that
7 Aaron Kerekes knew that this package contained marijuana,
8 hashish, or whatever.

9 It is not my intention to go into the evidence
10 minutely. I prefer you take it from the lips of the
11 witnesses, but I beg each and every one of you not to come
12 to any conclusion until you hear both sides.

13 I thank you for listening to me, and I shall have
14 the pleasure of speaking to you again at the end of the
15 trial during summations.

16 Thank you.

17 THE COURT: Thank you, Mr. Lenefsky.

18 MR. BATCHELDER: May I proceed, your Honor?

19 THE COURT: You may.

20 S R U B A V E L

T A V L I N , called on behalf of

21 the Government, being first duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BATCHELDER:

25 Q Mr. Tavlin, what is your occupation?

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20 GR

Tavlin - cross

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Q There was no deal made at that time, was there?

A No. I told David, "All right, take me to the guy," so David made a phone call. I guess he called him and told him, "I am bringing somebody over."

Q You don't know this, do you?

A No. I don't know that. I saw him making a phone call.

Q You saw him make a phone call. You don't know what he said or to whom he spoke?

A No.

Q You knew David for four or five years?

A Yes.

Q He never spoke to you about hashish?

A That's right.

Q Or any other drug?

A No.

Q Then you met him on the street on August 28th and for the first time he speaks to you about knowing some source where you could buy hashish?

A Right.

Q Did he know David at that time or did you tell him that you were working for the Government?

A I don't think David knew.

Q Did you tell him?

1 42 GR

Tavlin - cross

2 Q He mentioned the name Aaron, of course?

3 MR. BATCHELDER: Objection to the words,
4 "of course."

5 THE COURT: Sustained as to form.

6 Q You heard the name Aaron?

7 A Yes, I do.

8 Q This was from the fourth floor?

9 A Yes.

10 Q You could see him on the fourth floor?

11 A I can see, yes.

12 Q This was eight o'clock at night, wasn't it?

13 A Yes.

14 Q It is night time?

15 A Yes.

16 Q But you could see the face in the window?

17 A No.

18 MR. BATCHELDER: Objection to the characterization
19 of night time. It is August 29th, your Honor.20 THE COURT: If you want to bring something out
21 as to the time, you can.

22 Q Was it night time?

23 A Eight o'clock p.m.

24 Q Was it dark?

25 A Yes.

Q Did you see a face in the window on the fourth floor?

A No.

Q You heard a voice.

A Yes.

Q You heard it in Hebrew?

A Yes.

Q How did you know it came from the fourth floor?

A Because I saw the man bending down.

Q Bending through the window?

A Yes.

Q Did you happen to notice his face?

A No.

Q Did you know whether it was a man or a woman?

A It sounded like a man.

Q When you heard those words in Hebrew, did you hear Aaron say anything?

A Yes.

Q What did he say?

A He said, "Yes, it is me."

Q Where were the agents at this time, if you know?

A Around the corner.

Q How far from you were they?

A I guess about -- I don't recall exactly how far.

2 I can't tell you.

3 Q Half a block, ten feet, twenty feet?

4 A I can't tell you.

5 Q Could you see them? Were they nearby?

6 A I could not see them.

7 Q Did you ever get out of that car?

8 A Yes, I did.

9 Q On Spring Street?

10 A Yes.

11 Q After you heard those words, did you see anyone
12 at all come downstairs?

13 A No.

14 Q Did you see anyone walk out of 139 Spring Street?

15 A If I saw anyone --

16 Q Did you see anyone walking out of it?

17 A No.

18 Q Where did you see Aaron get the box?

19 A Aaron went into the -- there is a small door.

20 Q You saw him go in?

21 A Yes.

22 Q Did you see him come out?

23 A Yes.

24 Q Did you see him come out with any of these boxes?

25 A Yes.

2 Q One or both?

3 A One.

4 Q Did anyone else walk out with him?

5 A Yes. It was another man with him.

6 Q Then you did see another man?

7 A Yes.

8 Q Did you know him?

9 A No.

10 Q Did you know him at that time?

11 A No.

12 Q Did you hear him say anything?

13 A No.

14 Q Did you hear him talking to Aaron or Aaron talking
15 to him?

16 A No.

17 Q Was the other man carrying anything?

18 A If the man was carrying anything?

19 Q Was he carrying anything?

20 A I don't remember. I can't recall that.

21 Q What happened to the other man? Did he walk away?

22 A The minute I opened the door of my car he started
23 to walk through -- which is across the street -- the other
24 man hide his face and run back to the elevator.

25 Q You opened the trunk?

- 1
2 A I opened the door.
3 Q You saw --
4 A I saw Aaron holding the box.
5 Q You saw the man near him?
6 A The second one, yes.
7 Q And the next thing you know he covered his face
8 and ran back into the house?
9 A The other one, yes.
10 Q Was this the time when the agents who were walking
11 across the street arrested Aaron?
12 A No.
13 Q Did you see the agents approach the car before
14 this man turned back into the house?
15 A I saw one of the agents walking around.
16 Q Around what?
17 A Around the corner but not around there.
18 Q He was not visible where you were? He walked
19 around the corner?
20 A That's right.
21 Q So, did this man, when Aaron brought the package
22 and walked towards the trunk, cover his face with his hands
23 and run back into the house?
24 A Yes.
25 Q He was running back into the house?

MR. BATCHELDER: I have no further questions,
your Honor.

THE COURT: Agent, you are excused.

Thank you very much.

(Witness excused.)

ROBERT EDWARD ALLEN, called as a
witness on behalf of the government, having first
been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q What is your occupation?

A I am employed by the federal government as a
special agent, Department of Justice, Drug Enforcement
Administration.

Q How long have you been employed by the Department?

A Approximately two years.

Q Calling your attention to August 29th, 1973,
were you on duty on that day?

A Yes, I was.

Q At about 4:00 p.m. on that day what did you
observe, if anything?

A I was on surveillance in the vicinity of West
64th Street and Broadway. At approximately 4:00 p.m. on
that afternoon I observed Mr. Tavlin approach, walking north

1 you saw arms, legs, for five or ten seconds?

2 A That's not what I stated.

3 Q Isn't that what you said?

4 A I said from my vantage point on foot across
5 from the factory, 139 Spring Street, I saw arms and legs.
6 I knew there was another person in the vestibule. When
7 Mr. Kerekes walked across the street with the box towards
8 the vehicle and the trunk was opened by Mr. Tavlin at this
9 time, I was in front of the 139 residence. I was looking
10 in the vestibule and I had a clear view of the individual
11 who was in the vestibule.

12 Q But you didn't know whether that individual was
13 the same whose arms and legs you had seen prior thereto;
14 did you know at that time whether the arms and legs belonged
15 to the man you saw later on in the vestibule?

16 A Well, he had on the same color clothing as the
17 individual.

18 Q What color clothing was on the arms and legs
19 that identified him as the man you saw in the vestibule
20 later on?

21 A It was not later on. It was seconds, within a
22 minute, after I had seen him.

23 Q After you had seen the arms and legs?

24 A Yes, and I seen Mr. Kerekes leave that person in
25

bar and place a telephone call.

Q Do you see that subject in the courtroom today?

A Yes, sir, I do. He is sitting at defense table.

THE COURT: Is there a concession?

MR. LENEFSKY: Indicating Mr. Kerekes.

Q What did you do then, if anything?

A I got in a position so I could observe him dialing the number on the telephone.

Q Do you recollect, with any degree of certainty, what that number was that was dialed?

A I believe -- at the time I thought I was quite sure he dialed the number 926.

MR. LENEFSKY: I object to what he thought and what he believed.

THE COURT: Did you actually see, or by listening to clicks, hear the dialing of the telephone number? Yes or no?

THE WITNESS: Yes, sir, I did.

THE COURT: Did you see it or hear it?

THE WITNESS: I saw it.

THE COURT: What did you see?

THE WITNESS: I saw the first number dialed, 9; the second number dialed was 2; the third digit I was not

1 sure of. The last four digits I saw plainly.

2 Q And they were?

3 A 2665.

4 Q Were you able to overhear any of that conver-
5 sation?

6 A I could hear the defendant, Mr. Kerekes, talking
7 and I could discern that it was partially in English and
8 partially in another language. The actual content of the
9 conversation, most of it, I didn't perceive.

10 Q What did you do then after that observation?

11 A I remained inside the establishment until I
12 observed Mr. Kerekes go outside and walk up the street with
13 the informant and another subject.

14 Q Calling your attention to about 5:00 p.m. that
15 evening, what did you do?

16 A As I recall, I met with the informant and --

17 THE COURT: One moment, please.

18 (Pause.)

19 Q I believe we were around 5:00 o'clock that
20 evening.

21 What did you observe, if anything, or do?

22 A I returned to our headquarters with the informant
23 at approximately 5:00 p.m. and there remained with the
24 informant until approximately 6:00 p.m., when, once again,
25

(Discussion off the record.)

(Recess.)

(Jury in box.)

THE COURT: You may proceed, Mr. Lenefsky.

A A R O N K E R E K E S, the defendant herein, having
first been duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. LENEFSKY:

Q Mr. Kerekes, how old are you?

A 29.

Q Where were you born?

A Israel.

Q Are you an American citizen?

A Yes.

Q Where do you live?

A I reside at 99 46 Road, Rego Park, Queens.

Q Do you live with your mother?

A Yes, I do.

Q Have you been schooled here as well as in Israel?

A Yes.

Q Are you a graduate at Long Island University?

A Yes, I am.

Q Do you hold a degree?

Q Where did you go?

A He was driving all the way on the West Side, and we finally got downtown in the vicinity of that area in Spring Street.

Q What happened when you got to Spring Street?

A When we got to Spring Street, Mr. Tavlin said to me, "Right across the street here there is a bell. Would you mind ringing it? Somebody is going to come down with a box and give it to you. I don't want to leave the car because of the valuable -- because of the money I have in the car. Just bring it over. It is right across the street."

So I said --

Q Did he tell you what apartment?

A He told me the bell would be the one with no name on it. It would be a blank. That was the only one there.

Q Did you find that bell with no name on it?

A Yes, sir.

Q Did you ring it?

A I rang it.

Q What happened?

A There was no answer. Somebody walked out and I walked into the lobby and I stood right by the elevator

they don't come down, there is a phone at the corner.
Please call them up and tell them to definitely come down.
Maybe something is wrong with the bell."

At this point he found a number which he dictated to me and I wrote it down on a piece -- a matchbook that I had in my pocket. There was another number on it.

Q Was that the number you were supposed to call from the corner phone?

A Yes.

Q Did he ask you to go back again? What happened? You tell us what happened after that.

A At that moment I wrote down on the paper, he said, "Try again before you call."

Q Did you try again?

A Well, I didn't have to. There was somebody -- the door was still ajar. I opened it up and I could see a man walking into the elevator. He was walking with his back -- he turned around and pressed the button, whatever it was, whatever the mechanism, but the door closed immediately, and then I could see a box on the left hand side of the lobby.

Q Do you know whether that was the box you were supposed to pick up?

A No, I did not.

a rebuttal witness Special Agent Beckner.

J A M E S B. B E C K N E R, called as a rebuttal witness by the government, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Tell the Court and jury what your occupation is.

A I am a Special Agent with the Drug Enforcement Administration, United States Department of Justice.

Q How long have you been a special agent, please?

A Twelve years.

Q What are your present duties?

A Group 11 Supervisor, New York Regional Office.

Q Calling your attention to August 29th, 1973, did you have occasion to place a person now known to us as Aaron Kerekas under arrest?

A I assisted in that arrest.

Q Tell the Court and jury what happened?

A Well, at approximately 8:50 p.m. I observed Mr. Kerekas approach a government vehicle with a box. He went with the government informant to the trunk of the car, and he placed the box in the car.

I assisted other agents in my group in the arrest of Mr. Kerekas.

1
2 Q Does that refresh your recollection as to what
3 the telephone number was?

4 A I would like to see it again. I didn't look at
5 the number.

6 Yes, it does.

7 Q Would you please tell the Court --

8 A 925-2665.

9 Q At the time you talked with Mr. Kerekes you
10 advised him of his rights at that time?

11 A No, I didn't.

12 Q Do you know whether anybody advised him?

13 A No, I don't.

14 MR. BATCHELDER: I have no further questions.

15 CROSS-EXAMINATION

16 BY MR. LENEFSKY:

17 Q Agent Beckner, you said a time came when you
18 asked him where the hashish came from, right?

19 A Yes.

20 Q Did his response contain the word "hashish"?

21 A No, it did not.

22 Q Did you ask him point-blank whether he knew
23 what the contents of the box was?

24 A No, I did not.

25 Q He told you he got the box from the hall of